

ESTTA Tracking number: **ESTTA747938**

Filing date: **05/23/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	CEC Entertainment Concepts, L.P.
Granted to Date of previous extension	05/22/2016
Address	1707 Market Place Boulevard Suite 200 Irving, TX 75063 UNITED STATES

Attorney information	Denis V. Shamo Baker & McKenzie LLP 2001 Ross Avenue; Suite 2300 Dallas, TX 75201 UNITED STATES daltmuspto@bakermckenzie.com Phone:214-965-7293
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Applicant Information

Application No	86686940	Publication date	11/24/2015
Opposition Filing Date	05/23/2016	Opposition Period Ends	05/22/2016
Applicant	Kidcheck, Inc. 187 E. 50th Street Boise, ID 83714 UNITED STATES		

Goods/Services Affected by Opposition

Class 042. First Use: 2009/01/01 First Use In Commerce: 2009/01/01
All goods and services in the class are opposed, namely: Software as a service (SAAS) services featuring software for creating searchable databases of information and data

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2640269	Application Date	01/24/2000
Registration Date	10/22/2002	Foreign Priority Date	NONE
Word Mark	KID CHECK		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1994/01/24 First Use In Commerce: 1994/01/24 PROVIDING SECURITY FOR THE CHILDREN OF ADULT GUESTS BY PLACING IDENTIFICATION MEANS ON A CHILD AND PROVIDING THE ADULT GUEST WITH MATCHING IDENTIFICATION MEANS SO THAT THE ADULT GUEST AND THE CHILD MAY BE MATCHED UP PRIOR TO DEPARTURE

Attachments	Exhibit A.pdf(153721 bytes) Exhibit B.pdf(305436 bytes) Exhibit C.pdf(510819 bytes) Exhibit D.pdf(92341 bytes) Notice of Opposition.pdf(258898 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Denis V. Shamo/
Name	Denis V. Shamo
Date	05/23/2016

EXHIBIT A

Some users are unable to retrieve data from TSDR using the Internet Explorer browser. The USPTO is working to resolve the system problem. As a workaround, please open TSDR in a different browser, such as Google Chrome, Safari, or Mozilla Firefox. For additional assistance, email TSDR@uspto.gov.

STATUS

DOCUMENTS

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Mark: KID CHECK

KID CHECK

US Serial Number: 75902468

Application Filing Date: Jan. 24, 2000

US Registration Number: 2640269

Registration Date: Oct. 22, 2002

Register: Principal

Mark Type: Service Mark

**TM5 Common Status
Descriptor:**



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the O

Status: The registration has been renewed.

Status Date: Nov. 13, 2012

Publication Date: Oct. 16, 2001

Notice of Allowance Date: Jan. 08, 2002

▲ Mark Information

▼ Expand All

▲ Related Properties Information

▼ Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: PROVIDING SECURITY FOR THE CHILDREN OF ADULT GUESTS BY PLACING IDENTIFICATION ME
PROVIDING THE ADULT GUEST WITH MATCHING IDENTIFICATION MEANS SO THAT THE ADULT G
BE MATCHED UP PRIOR TO DEPARTURE

International Class(es): 042 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 24, 1994

Use in Commerce: Jan. 24, 1994

▲ Basis Information (Case Level)

▼ **Current Owner(s) Information**

Owner Name: CEC ENTERTAINMENT CONCEPTS, L.P.

Owner Address: 4441 West Airport Freeway
Irving, TEXAS UNITED STATES 75062

Legal Entity Type: LIMITED PARTNERSHIP

**State or Country Where
Organized:** TEXAS

▲ **Attorney/Correspondence Information**

▲ **Prosecution History**

▼ **Maintenance Filings or Post Registration Information**

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

Renewal Date: Oct. 22, 2012

▲ **TM Staff and Location Information**

▲ **Assignment Abstract Of Title Information - Click to Load**

▲ **Proceedings - Click to Load**

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,640,269

Registered Oct. 22, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

KID CHECK

SHOWBIZ MERCHANDISING, INC. (NEVADA
CORPORATION)
4441 WEST AIRPORT FREEWAY
IRVING, TX 75062

FIRST USE 1-24-1994; IN COMMERCE 1-24-1994.

OWNER OF U.S. REG. NO. 1,996,403.

FOR: PROVIDING SECURITY FOR THE CHILDREN OF ADULT GUESTS BY PLACING IDENTIFICATION MEANS ON A CHILD AND PROVIDING THE ADULT GUEST WITH MATCHING IDENTIFICATION MEANS SO THAT THE ADULT GUEST AND THE CHILD MAY BE MATCHED UP PRIOR TO DEPARTURE, IN CLASS 42 (U.S. CLS. 100 AND 101).

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "KID", APART FROM THE MARK AS SHOWN.

SN 75-902,468, FILED 1-24-2000.

ZHALEH DELANEY, EXAMINING ATTORNEY

EXHIBIT B



Kid Check®



Clean & Open Environment



Wholesome Family Fun!



Come Together, Leave Together

keep peace of mind

Everyone who enters our store gets a unique hand stamp that's verified upon their exit.



EXHIBIT C

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Easy, Fast, Secure Children's Check-In

[▶ Request a Free Demo](#)[or view features](#)

Because he's more than just a kid...



"KidCheck is a fabulous tool! They worked with us to be set up properly and efficiently, provided a great deal of training, and continue to check back. The software is NOT complicated and parents appreciate the seriousness we show about their children. Ease of registration and quick sign in is amazing! It tracks attendance, allergies, and we know who should be picking up. Connecting with parents could not be easier. Thanks KidCheck!"

Gary Kniseley, Maywood Evangelical Free Church - Rockford, IL

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Some of our happy customers:



KidCheck Features

[View All Features](#)

Improve Security

Extensive security features including allergy and medical warnings



Streamline Check-In (Including Mobile)

Intuitive interface and easy to use screens make child check-in a breeze



Easily Track Attendance

Comprehensive reporting and attendance tracking



Provide Peace-of-Mind

Create a positive experience for parents and visitors

Starting at just \$25/month

[▶ View pricing](#)[or Compare Children's Check-In Software Editions](#)

Free Downloads

[Video: Improving Child Safety](#)[eBook: Technology and Children's Check-in](#)

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About Us



Connecting with customers at a recent conference

At KidCheck, we have a passion for child safety and the role technology can play in helping **churches**. Our focus is on providing full-featured, easy-to-use **children's check-in software** and **equipment** solutions. Solutions that improve child security, streamline the check-in process, and create a positive parent and visitor experience; all at an **exceptional value**.

We believe every child deserves a chance to grow up in a safe environment, and every parent deserves peace-of-mind about the safety of their children. The first step in reaching a parent is by protecting their children. Our focus is not only on delivering the best **children's check-in system** available, but also on creating strong personal relationships with **our customers**, and ensuring each one knows they are an important part of the KidCheck family.

We believe technology should not be intimidating or complex, but make life simpler. We pride ourselves on being readily available to help in whatever way we can, and bringing additional value beyond our children's check-in software. This includes **free training and support** which is available **6 days a week** (including Sunday morning), **best practice articles** on subjects such as **child safety**, and the **KidCheck blog** to consistently provide helpful information, tips and tricks.



CEO Alex Smith on Omlet Day - yep, he's the chef!



A sweet surprise with your label order

The KidCheck culture is one of teamwork, commitment and responsiveness. We believe in being flexible and agile, and listening carefully to each other, and the needs of our customers. We are honored to serve **churches**, **fitness facilities**, and **childcare organizations** across North America. Our beliefs and principles drive us to continually improve our product and ensure that every KidCheck **customer** feels satisfied, listened to and appreciated.

KidCheck in Action



Request a Free Demo

Want to see KidCheck in action?

[Request Demo](#)

"I researched just about every check-in program on the market and even created one for our use. Nothing compares to KidCheck. It is easy to use, the reporting features are awesome, and the support staff is great. We love it."

*William Mullins
Journey Christian Church, Irvine, CA*

More Information

[Child Check-In Features](#)[KidCheck Pricing](#)[KidCheck Store](#)[Videos](#)[Screenshots](#)[Customer Feedback](#)



KidCheck © 2016 | [Login](#) | [Live Chat](#) | info@kidcheck.com | (855) 543-2432

[Info for Parents](#) | [Shipping Policy](#) | [Privacy Policy](#) | [Cancellations & Returns](#)

EXHIBIT D

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I sometimes see other KidCheck names and references, such as with Chuck E. Cheese and Sight Savers America, is that you?

We are not affiliated or associated with Chuck E. Cheese or Sight Savers of America in any way. Each of those companies utilize the name Kid Check for their own separate and different products or programs. It is not KidCheck secure children's check-in software.

[How can I stay up-to-date with KidCheck news? »](#)

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No.: 86/686,940

Mark: KIDCHECK

Date of Publication: November 24, 2015

CEC ENTERTAINMENT CONCEPTS, L.P.,

Opposer,

v.

KIDCHECK, INC.,

Applicant.

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Opposition No. _____

NOTICE OF OPPOSITION

Pursuant to 37 C.F.R. § 2.104(b), Opposer, CEC Entertainment Concepts, L.P., a Texas limited partnership with a business address of 1707 Market Place Boulevard, Suite 200, Irving, Texas 75063, hereby opposes registration of the trademark application under Serial No. 86/686,940 for the mark KIDCHECK, published in the *Official Gazette* on November 24, 2015 (“Applicant’s Application” and “Applicant’s Mark”). Opposer believes that it will be damaged by registration of the mark identified above and requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer asserts as follows:

1. Opposer, for many years and since long prior to any date of first use upon which Applicant can rely, has adopted and continuously used the term “KID CHECK” as a service mark for its services. Opposer has acquired extensive rights, including an international reputation for quality services and other goodwill, in the mark KID CHECK (“Opposer’s Mark”) for the services of providing security for the children of adult guests.

2. Opposer owns U.S. Trademark Registration No. 2,640,269 for the mark KID CHECK for “providing security for the children of adult guests by placing identification means on a child and providing the adult guest with matching identification means so that the adult guest and the child may be matched up prior to departure” in International Class 42 (“Opposer’s Registration”), with priority from first use in commerce at least as early as January 24, 1994. Opposer’s Registration is valid, subsisting, and incontestable. Title and status copies of Opposer’s Registration are attached as Exhibit A.

3. Opposer also owns common law rights in the KID CHECK mark, arising from its widespread, prominent, and substantially exclusive use of the mark in commerce for over twenty-two years.

4. There is no issue as to priority. Opposer has continuously used Opposer’s Mark in connection with its services of providing security for the children of adult guests in U.S. commerce since at least as early as January 24, 1994. On information and belief, any date of first use to which Applicant could claim trademark rights is subsequent to Opposer’s date of first use.

5. Opposer currently operates more than 570 family dining and entertainment centers under the famous CHUCK E. CHEESE’S brand in 47 states and 12 foreign countries, which offer a wholesome family dining experience, video games, skill games, rides and other attractions, along with tokens, tickets, and prizes. Opposer’s KID CHECK brand services are provided at all of these locations.

6. By virtue of Opposer’s widespread and longstanding use of Opposer’s Mark, the public has come to associate Opposer’s Mark with Opposer and Opposer’s services. As a result of that association and recognition, Opposer has developed a valuable reputation in connection

with Opposer's Mark. Further, by virtue of its efforts, the expenditure of considerable sums for promotional activities, and the high quality of its goods and services, Opposer has acquired extensive goodwill in Opposer's Mark. Opposer's Mark qualifies as a "well-known" mark under Article 6bis of the Paris Convention.

7. On July 8, 2015, Applicant filed a use-based application under Serial No. 86/686,940 for KIDCHECK for "*software as a service (SAAS) services featuring software for creating searchable databases of information and data*" in International Class 42, claiming use in U.S. commerce as early as January 1, 2009. As discussed below, although the services identified in Applicant's Application do not, at first blush, appear to be related to Opposer's services, they are, in fact, closely related because they fulfil the same function, travel in the same channels of trade, and target the same users as Opposer's services, and – most importantly – because they would be encountered by consumers under circumstances that would give rise to an incorrect assumption that they originate from the same source as Opposer's KID CHECK services.

8. Applicant's Application was published for opposition on November 24, 2015. In August 2015, Opposer became aware of Applicant's Application and, on March 10, 2016, sent to Applicant a letter requesting that Applicant cease and desist from its use of the confusingly similar mark KIDCHECK.

Count I – Likelihood of Confusion - § 2(d)

9. The mark that Applicant seeks to register – KIDCHECK – is essentially identical to Opposer's KID CHECK mark. The presence of a space between "KID" and "CHECK" in Opposer's Mark is of no trademark significance, and the two marks create identical overall commercial impressions.

10. Although the services identified in Applicant's Application do not appear to be related to Opposer's services, they are, in fact, closely related. Opposer uses Opposer's Mark in connection with providing security for the children of adult guests. Opposer's service, offered at over 570 family restaurants and entertainment centers worldwide, "checks in" children when they arrive, and ensures that they leave with the same adults who brought them in. *See* Exhibit B (printout from Opposer's website discussing its KID CHECK services). Applicant uses KIDCHECK in connection with a "children's check-in" software-as-a-service that fulfils the same function. Applicant's licensees – which, on information and belief, include family restaurants and Opposer's other direct competitors – use the software to provide a KIDCHECK-brand service that ensures that checked-in children are retrieved by authorized adults. *See* Exhibit C (printouts from Applicant's website discussing its KIDCHECK services).

11. The only difference between the Opposer's and the Applicant's services is the method by which they are implemented. On the other hand, Opposer's and Applicant's services fulfil the same function, are offered at the same kind of facilities, and target the same end users. Opposer's and Applicant's services are encountered by the same persons under circumstances that would give rise, because of the essentially identical marks used in connection therewith, to an incorrect assumption that they originate from the same source – which is the essence of a likelihood of confusion.

12. Due to the essentially identical nature of Applicant's Mark and Opposer's Mark, as well as the highly similar services associated with the parties' marks, use and registration of Applicant's Mark is likely to cause confusion, mistake, and deception as to the source, origin, affiliation, and/or sponsorship of Applicant's services within the meaning of Section 2(d) of the Trademark Act, and will result in irreparable damage and injury to Opposer and the goodwill and

reputation symbolized by Opposer's Mark. Persons familiar with Opposer's KID CHECK Mark who encounter Applicant's KIDCHECK services at a competing dining establishment or entertainment facility would be likely to believe, incorrectly, that such services originates from, are associated with, or are sponsored by Opposer. In turn, this would enable Applicant to misappropriate and unfairly trade upon Opposer's valuable goodwill and reputation in Opposer's Mark by promoting the infringing KIDCHECK services to Opposer's competitors, all to Opposer's irreparable damage.

13. In fact, on information and belief, there have been multiple instances of *actual* marketplace confusion between Opposer's and Applicant's marks. Applicant's website contains a section of "Frequently Asked Questions," one of which is "I sometimes see other KidCheck names and references, such as with Chuck E. Cheese [the brand of Opposer's restaurants and entertainment centers] ..., is that you?" See Exhibit D (printout from the "Frequently Asked Questions" section of Applicant's website). The fact that Applicant is "frequently asked" about whether its KIDCHECK services originate from Opposer is clear evidence of actual marketplace confusion. Such marketplace confusion has already resulted in irreparable damage and injury to Opposer and the goodwill and reputation symbolized by Opposer's Mark, and the grant of registration to Applicant for Applicant's Mark would exacerbate the damage and injury to Opposer's rights and goodwill.

14. Finally, any defect, objection, or fault found with Applicant's services marketed under Applicant's Mark would necessarily reflect upon and seriously injure the reputation which Opposer has established for its quality services marketed and sold under Opposer's Mark. Likewise, use of Applicant's Mark would diminish the ability of Opposer's Mark to function as source indicators for Opposer's services. Thus, the grant of registration to Applicant for

Applicant's Mark would grant Applicant statutory rights in violation of the established prior rights of Opposer in Opposer's Mark, and will damage Opposer's reputation and goodwill in Opposer's Mark.

Count II – Dilution - § 43(d)

15. Opposer's Mark has been widely used and extensively publicized in the United States and around the world; Opposer's Mark therefore has become well-known and famous as a distinctive symbol of Opposer's goodwill.

16. On information and belief, Applicant is using its mark in commerce with the willful intent to trade on Opposer's reputation or to cause dilution of Opposer's famous mark.

17. Opposer's Mark became well-known and famous before Applicant made any use of its mark. Applicant had constructive notice of Opposer's KID CHECK mark when it filed its Application.

18. Use or registration of Applicant's Mark will cause dilution of the inherently distinctive quality of Opposer's Mark.

19. Use or registration of Applicant's Mark will lessen the capacity of Opposer's famous mark to identify and distinguish Opposer's services.

20. Use and registration of Applicant's Mark by Applicant will tarnish, dishonor, injure and degrade Opposer and deprive Opposer of the ability to protect its reputation and goodwill.

WHEREFORE, Opposer requests that this Opposition be sustained and that registration of Applicant's Application be refused.

Dated: May 23, 2016

Respectfully submitted,

/s/ Denis V. Shamo

Denis V. Shamo

(denis.shamo@bakermckenzie.com)

Michigan Bar No. P73568

Justin P. Welch

(justin.welch@bakermckenzie.com)

Texas Bar No. 24070825

BAKER & McKENZIE LLP

2300 Trammell Crow Center

2001 Ross Avenue

Dallas, Texas 75201

Telephone: (214) 978-3000

Facsimile: (214) 978-3099

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION was served on May 23, 2016 via Certified Mail to Applicant's attorney of record as identified below.

Bradlee R. Frazer
Hawley Troxell Ennis & Hawley LLP
877 Main Street, Suite 1000
Boise, ID 83702

/s/ Denis V. Shamo
Denis V. Shamo